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CANADIAN BAR ASSOCIATION

ADDRESS BY HON. WILLIAM H. TAFT ON LEGAL ETHICS

Fifth Annual Meeting, Ottawa
September 2nd, 1920

Gentlemen of the Bar of Canada:

There is a play—or used to be a play—I do not know that it is acted now—entitled “Too Much Johnson.” I do not want to have that offered as a text.

I have not had the pleasure of attending your business meetings, where you do work, until this afternoon, but seeing such is a tempting programme—the discussion of the Code of Quebec and the usefulness of uniting some of its provisions, or extending the effect of some of its provisions, to the law of the other Provinces,—it attracted me much; and also the announcement that you were to take up the matter of canons of legal ethics. Personally it gives me great pleasure to note that you have approved, not a full exposition of all legal ethics, but a short, comprehensive and what I am sure will be for many a very useful statement. I can say from my own experience that, having left office with the full consent of the people of the United States (laughter) I have found myself called on to try my hand on the next generation in teaching and lectures on the subject in respect to which they thought I was least defective, I was invited to deliver a series of lectures on legal ethics to the Law School of the University of Boston. For those who are called upon to perform that duty I speak with earnestness on the necessity of each Bar attempting to state its ideal of the ethics of the profession. I, with great deference, differ with the learned justice who ventured to think that those ethics should be kept, if I may so without disrespect, *in nunibus*. I have found that one of the great difficulties in reform, in moving on, is the difficulty of formulating and stating definitely what you have in your mind. (Hear, Hear.) Therefore, when you speak of the spirit of the profession you speak of something which you ought to be able to describe, when called upon and challenged in a definite statement of what you mean. You need not make it all-inclusive. You cannot do that, doubtless. I could suggest some additions here, perhaps only because of particular instances that come to my mind.

One of the departures—perhaps it is included in general words here—but one of the departures from a rule that should

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guide the profession in the representation of clients is the allowing of one's self to acquire such a personal interest in one's own appearances as counsel as to forget that you are serving someone else. I have known a distinguished counsel to feel that it is a personal matter between him and the court. (Laughter). That it is very much more important that he should vindicate his personality and his knowledge than it is that he should win his case. We have had two or three noted instances in our profession within a very few years.

Now, of course that is a detail that I speak of only as something that has occurred to me that you could not probably cover in a general statement like this, but that would be included by inference should the question arise. But what I wished to emphasize was that every time a Bar like this, with high ideals, adopts a canon, such a series of canons as these, you furnish precedent and authority that are useful for all who come to the Bar. You in Canada probably are not exposed as much to the dangers of departures from legal ethics as we are. No one can speak in higher terms, or more sincerely from the heart, than I of that wonderful body that has been constituted for a century, or goes back two or three centuries, of the English Bar. One must consider, with respect to that Bar in the matter of its ethics, that it was a very limited body and selected by the circumstances, so that it was easy, as in a club of a few members, to maintain the spirit to which the Justice of the Supreme Court of Ontario so feelingly referred. But you in Canada have departed from that. You unite now your duty as solicitors with your duty as barristers. The solicitors were duly and highly regarded, doubtless, and they probably made more money than the barristers, but the office of solicitor had more of a trade character than had the profession of the barrister. Now they are united. The barrister had little to do with the collection of moneys or the use or the commingling of his client's moneys with his own. Now you have to go further and you have to define the duties of the trustee, pointing out the sacred trustee that the solicitor must be. And I was delighted when you struck out the words: "except with the consent of the client" for the reason that what that amendment is directed to is not so much—well, perhaps, I ought to say that—is not more, I will say,—is not more the temptation that comes, first to neglect, then to indifference and then to embezzlement, from the practice of co-mingling; than it is a warning to the solicitor that he must not take advantage of his relation to his client to invite a consent that he ought not to ask the client to give. (Applause). The most distressing cases that you have of that kind are those where the client who comes to you to consult you, is afterwards obliged to admit that SHE—and I say "she" because it is ordinarily that sex—is obliged to admit that she knew what her representative was doing and consented to it. And you

know that she consented to it because she did not know her rights and did not know the danger that there was in the consent that she gave.

You have a smaller Bar than we. I do not think your bar goes quite to the extreme of going into business that we have with us. Perhaps I look at it from the stand-point of the bench, because when I departed from the virtuous paths of the profession I was on the bench; but I feel as if our profession were in great danger of becoming a mere business and that the practice in court, the argument, the traditions of the profession that we cherish, are in danger of being lost in the conditions that modern businesses have presented. A man says "I never go into court. You don't make any money in court. You make money in management." Well, if that be the case, I think we need a code of ethics a little more than we did when we were discharging the duty we had to discharge under the supervision of a court, that could pull us up when we departed from the rules. We in the United States say the importance of legal ethics is greatly increasing because of the change that conditions have brought about in the nature of the practice of the profession. I am glad, very glad, that the Canadian Bar Association has added its authority and its weight in forming a precedent for a set of rules so much like ours that they can be referred to as sustaining the position that the American Bar Association has taken. That the young lawyers, or young students at law, long for the teaching of such principles as are set out here, and the advantage of being able to refer to them, I can testify from somewhat extended personal experience. (Applause.)



